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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:
UNITED STATES OF AMERICA	:
	:
	:
-against-	:
	:
	:
JEFFREY STEIN, et al.,	:
	:
Defendants.	:
	:
	:
-----X	

05 Cr. 888 (LAK)

**NOTICE OF MOTION  
OF CERTAIN DEFENDANTS**

PLEASE TAKE NOTICE that upon the declaration of Ronald E. DePetrìs, dated January 12, 2006, upon the accompanying memorandum of law, and upon all the proceedings heretofore had herein, Defendants Jeffrey Stein, John Lanning, Richard Smith, Jeffrey Eischeid, Philip Wiesner, David Amir Makov, Larry DeLap, Steven Gremminger, Randy Bickham, Mark Watson, Carol Warley, and David Rivkin (collectively "Defendants"), will move this Court, before the Honorable Lewis A. Kaplan, United States District Judge, at the United States Courthouse, 500 Pearl Street, New York, New York, at a time and date to be set by the Court, for an order pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure granting the following relief to remedy the violation of defendants' constitutional rights to counsel and a fair trial resulting from the prosecutors' wrongful interference with defendants' ability to obtain

advancement of legal fees from KPMG LLP (“KPMG”) for use in the defense of this criminal prosecution: (1) an order directing that advancement of legal fees be provided to the KPMG defendants; (2) an order dismissing the indictment based on the totality of prosecutorial misconduct (the wrongful interference set forth on this motion, as well as other misconduct set forth on the accompanying motion addressed to the KPMG deferred prosecution agreement); and (3) an order granting such other and further relief as the Court may deem appropriate.

Dated: January 12, 2006

Respectfully submitted,

By: /s/  
David Spears

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TO: Justin Weddle, Esq.  
*Assistant United States Attorney*

UNITED STATES OF AMERICA,

- against -

JEFFREY STEIN, et al.,

Defendants.

Case No. 05 Cr. 888 (LAK)

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK    )

FRANK N. DAGOSTINO, being duly sworn, deposes and  
says:

1. I am over the age of eighteen years, am employed by the law firm of Paul, Hastings, Janofsky & Walker LLP and am not a party to this action.
2. On the 12th day of January, 2006, I served a true and correct copy of the documents described as NOTICE OF MOTION OF CERTAIN DEFENDANTS' and the DECLARATION OF RONALD E. DePETRIS by personally delivering to and leaving true copies of same as addressed below:

OFFICE OF THE UNITED STATES ATTORNEY  
for the SOUTHERN DISTRICT OF NEW YORK  
One St. Andrew's Plaza  
New York, NY 10007  
Attn. Assistant United States Attorney Justin S. Weddle, Esq.

  
Frank N. Dagostino

Sworn to before me this  
12th day of January, 2006

  
Notary Public

**DEBORAH SALZBERG**  
**Notary Public, State of New York**  
**No. 02SA6113203**  
**Qualified in New York County**  
**My Commission Expires July 26, 2008**